

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,)	
)	No. 56391-2-I
Respondent,)	
)	DIVISION ONE
v.)	
)	UNPUBLISHED OPINION
Ramiro Valle-Chavarin,)	
)	
Appellant.)	FILED: August 21, 2006

PER CURIAM. Ramiro Valle-Chavarin appeals his convictions of one count of attempted child molestation in the second degree of his 13-year-old stepson, and two counts of child molestation in the first degree of his 11-year-old stepdaughter. Valle-Chavarin contends there was insufficient evidence to support the convictions. We disagree and affirm.

Ramiro Valle-Chavarin was the stepfather of two children V.H. (male, born 6/11/91), and C.H. (female, born 6/11/92). He married their mother Sophie Valle-Chavarin and moved in with the family in April 2000.

V.H. testified that Valle-Chavarin approached him when he was laying down in the living room. V.H. heard him and pretended to be asleep pulling the covers over his head. Valle-Chavarin took down his boxer shorts and had them around his thighs. He knelt down and attempted to turn V.H.'s head toward him. V.H. testified that he turned away still pretending to be asleep, kicking out at Valle-Chavarin as Valle-Chavarin tried to turn V.H.'s head toward him. They

then both heard a key in the door signifying his mother's return. V.H. saw Valle-Chavarin pull his pants up and walk away towards the bedroom. This occurred approximately in late December 2003 although V.H. could not remember the exact year. V.H. told his mother about the incident and she confronted the stepfather who denied the abuse.

Evidence is sufficient to support a conviction if, viewed in the light most favorable to the prosecution, it permits any rational trier of fact to find the essential elements of the crime beyond a reasonable doubt.¹ "A claim of insufficiency admits the truth of the State's evidence and all inferences that reasonably can be drawn therefrom."² Circumstantial evidence and direct evidence are equally reliable.³

RCW 9A.44.086 provides:

(1) A person is guilty of child molestation in the second degree when the person has, or knowingly causes another person under the age of eighteen to have, sexual contact with another who is at least twelve years old but less than fourteen years old and not married to the perpetrator and the perpetrator is at least thirty-six months older than the victim.

The statute for child molestation does not make a "distinction between whether the victim's intimate parts are touched by the accused or whether the accused's intimate parts are touched by the victim."⁴ The record demonstrated that there was evidence to support the jury's conviction of attempted child molestation. All of the elements of the crime were established. V.H.'s testimony recounting that

¹ State v. Salinas, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992).

² Salinas, 119 Wn.2d at 201.

³ State v. Delmarter, 94 Wn.2d 634, 638, 618 P.2d 99 (1980).

⁴ State v. Gary J.E., 99 Wn. App. 258, 265, 991 P.2d 1220 (2000).

Valle-Chavarin's pulled down his boxer shorts, and knelt by V.H.'s head was sufficient for the jury to draw the conclusion that he attempted to have V.H. touch or otherwise come into contact with Valle-Chavarin's penis.

Valle-Chavarin's second contention that there was no proof of sexual gratification is without merit. Sexual gratification is not an essential element that needs to be proved; rather, it is a term that helps define sexual contact.⁵ The evidence recited above is more than enough to prove sexual contact.

Valle-Chavarin's third contention that there was insufficient evidence to establish that the attempted child molestation took place during the charging period is also without merit. The charging period was from December 25, 2002 to February 15, 2004. Although V.H. could not recall the year the incident occurred, he testified that it had happened after Christmas because he was using the pillow that was a Christmas gift from Valle-Chavarin. The time frame was additionally established by V.H.'s mother Sophie who testified that V.H. had told her about the event approximately one year and five months prior to her testimony which was in April 2005. This information was sufficient for the jury to find that the offense was committed within the charged time frame.

Valle-Chavarin also claims that there was insufficient evidence to support more than one conviction for child molestation in the first degree with respect to his stepdaughter. We disagree.

There was ample evidence for the jury to find that more than one incident of child molestation occurred. C.H. testified that Valle-Chavarin had come into

⁵ State v. Lorenz, 152 Wn.2d 22, 34, 93 P.3d 133 (2004).

her bedroom on more than one occasion and touched her breasts while she was in bed. She also testified that he touched her vagina. Additionally, C.H. described an incident when she was sick where Valle-Chavarin rubbed alcohol over her body including her breasts and vagina. C.H.'s mother confirmed that C.H. had told her of these incidents, but stated that she had not believed her at the time.

Valle-Chavarin filed a statement of additional grounds for review. RAP 10.10(a). He claims ineffective assistance of counsel. In order to prove ineffective assistance of counsel, a defendant must show that the attorney's performance was deficient and that prejudice resulted.⁶ A careful review of the record herein, shows no such deficiency upon the part of counsel.

The judgment and sentence is affirmed.

FOR THE COURT:

Grosse, J.

Dwyer, J.

Cox, J.

⁶ State v. McFarland, 127 Wn.2d 322, 334-35, 899 P.2d 1251 (1995).